

PRESERVING OUR RIGHT TO KNOW

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Free Flow of Information Act Advances

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Last year, the U.S. House of Representatives approved the Free Flow of Information Act, legislation I authored which would protect reporters from being compelled to reveal their confidential sources in a federal criminal or civil matter. Last month, the Senate Judiciary Committee approved its version of the legislation, bringing us one step closer to enacting the measure. It now awaits consideration before the full Senate.

Reporters rely on the ability to assure confidentiality to sources in order to deliver news to the public, and this ability is especially critical for the delivery of news on highly contentious matters of broad public interest. Without the promise of confidentiality, many sources would not provide information to reporters, and the public would suffer from the resulting lack of information.

Imagine a single mother who works at a factory and struggles to support her family on the hourly wage she is paid. Imagine she knows that there is a flaw in the product being made there—a flaw which could potentially put the lives of those who use the product at risk. A reporter who has been tipped off about possible problems at the plant seeks to interview her for a story which, by exposing the situation, has the potential to save lives and enhance public safety. Without a guarantee of confidentiality, the woman is unlikely to risk her job by speaking with the reporter, whistleblower laws notwithstanding, and lives will continue to be endangered. As a result, free speech, the free press and public safety all suffer.

It is because of scenarios like these that thirty-six states and the District of Columbia have existing laws which protect reporters from the compelled disclosure of confidential sources of

information. Such overwhelming support for assuring the confidentiality of journalists' sources at the state level lays bare the glaring lack of similar protections at the federal level.

The absence of federal legislation protecting reporters' sources limits the public's access to information which is vital to the functioning of a democratic society. The press allows citizens to serve as watchdogs, speaking out about and exposing what are often illegal, corrupt, or dangerous activities by both private and government actors. But in certain situations, individuals will be unwilling or unable to come forward and share vital information without a promise of confidentiality from a reporter.

During the past few years, more than thirty reporters have been subpoenaed or questioned in federal court proceedings about confidential sources, and several have been handed or threatened with jail sentences. Such actions inevitably have a chilling effect on the willingness of reporters to rely on confidential sources and on the willingness of sources to speak to reporters.

It is for this reason that I have introduced the Free Flow of Information Act. This bi- partisan legislation sets criteria which must be met before information can be subpoenaed from reporters in any federal criminal or civil matter. The standards set forth in the legislation carefully balance the public interest in the free flow of information against the public interest in compelled testimony. Only when a strong public interest compels the disclosure, such as when national security is at risk or where imminent bodily harm is threatened, will there be a compelled disclosure by a reporter of the source of confidential information. This measure makes these standards mandatory in all federal judicial, legislative and administrative proceedings, with heightened protection for the identities of confidential sources.

It is essential to bring matters to light about which only those on the inside have substantial knowledge. I am pleased that the Senate Judiciary Committee has approved its version of the Free Flow of Information Act, and I am optimistic that the full Senate will approve the measure as well. Enactment of the Free Flow of Information Act will assure a stronger underpinning of both freedom of the press and free speech in future years.

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